

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DONALD L. BOYER,

Petitioner,

CASE NO. 2:07-cv-629
JUDGE WATSON
MAGISTRATE JUDGE KEMP

v.

MICHAEL SHEETS, Warden,

Respondent.

OPINION AND ORDER

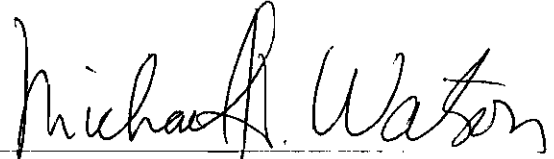
On June 2, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to all of the Magistrate Judge's conclusions and recommendations. Specifically, he objects to the Magistrate Judge's recommendation that his claim under *Blakely v. Washington*, 542 U.S. 296 (2004), be dismissed as procedurally defaulted. Petitioner argues that, under *State v. Foster*, 109 Ohio St.3d 1 (2005), the claim is jurisdictional and cannot be waived. Additionally, he asserts as cause for his failure to raise this claim in the state appellate court that neither defense counsel nor the state courts understood, at the time, the ramifications of *Foster*. Petitioner also objects to the Magistrate Judge's recommendation that claims two and three be dismissed on the merits. He argues that

amendment of the indictment to expand the time frames of the charges against him constituted a structural error rendering the indictment defective and denying him fair notice of the charges and the ability to defend. Additionally, he again contends that admission of documents from the Children's Hospital Child Advocacy Center violated the Confrontation Clause, and raises all of the same arguments that were previously presented.

Pursuant to 28 U.S.C. §626(b)(1) this Court has conducted a *de novo* review of the *Report and Recommendation*. This Court has carefully considered the entire record, and all of the arguments presented. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's arguments are not well taken. Petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.



MICHAEL H. WATSON
United States District Judge